



ANN HRAYCHUCK
STATE REPRESENTATIVE

March 25, 2010

**Testimony of Rep. Ann Hraychuck
Before the Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform, and Housing
Regarding Senate Bill 611**

Good morning, Chairwoman Taylor and committee members. I appreciate the opportunity to provide you with information about Senate Bill 611.

Senate Bill 611 combines two existing bills—Assembly Bill 357, the Straw Purchasing Bill, and Assembly Bill 373, the Stolen Firearms Bill. The Assembly version of Senate Bill 611 passed the Criminal Justice Committee unanimously last month.

I want to thank Representatives LeMahieu and Gunderson for working with me on this important legislation.

Senate Bill 611 does two things. First, under current law, the penalty for stealing a firearm is a class H felony. The penalty for knowingly receiving or concealing a stolen firearm is only a misdemeanor. This bill will increase the penalty for knowingly receiving or concealing a stolen firearm to a class H felony and thus treat the two offenses equally. This is the same as AB 357.

Second, under current law, the penalty for lying on the background check forms when purchasing a firearm is a class A misdemeanor. This means that when a person buys a gun with the intent to transfer it to a convicted felon, the purchaser can only be charged with a misdemeanor. This legislation will increase the penalty to a class H felony and thereby prohibit the straw buyer from purchasing or possessing firearms in the future.

This is virtually the same as AB 373, except for a minor language clarification that the National Rifle Association brought to our attention. Under SB 611, a person would need to know or reasonably should know the person they are transferring the firearm to is prohibited from possessing a firearm in order to be guilty of a class H felony.

Thank you for your consideration. I would be happy to answer any questions that you may have.



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**Testimony of Rep. Ann Hraychuck
Before the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance
Reform, and Housing Regarding Senate Bills 376 and 377**

Good morning, Chairwoman Taylor and committee members.

Law enforcement officers by very nature of their job have enemies that mean to harm them. On a personal note, I know of an individual that was convicted of felony child abuse on a case that I investigated and he said he was going to kill to me when he gets out of prison. Well, he is now out of prison and I can no longer legally carry a concealed firearm to protect myself from him.

Senate Bill 377 that is before you today would codify the federal law H.R. 218 – also known as the Law Enforcement Officers Safety Act of 2004 - into Wisconsin State Statutes. This would allow retired law enforcement officers to carry a concealed firearm for their own protection as well as for the protection of the general public.

Also before you is Senate Bill 376, which establishes a funding mechanism for this new law. This bill creates an appropriation account that the Department of Justice can deposit any fees charged to those retired law enforcement officials seeking certification to carry a concealed weapon.

Public safety is really at the heart of SB 376 and 377 and that is why the Law Enforcement Officers Safety Act of 2004 was passed at the federal level five years ago. Law enforcement officers have received the necessary training to appropriately use firearms in the performance of their jobs. It is a crying shame that we are not utilizing the skills of the many retired law enforcement officers in our communities and across the state to help keep our families safe.

When I was first elected to the State Assembly I introduced myself to one of the Capitol Police officers and thanked him for his public service. He said, "I know you are a retired sheriff. We always know who the former cops are so we know who we can count on if we need help." I cannot think of a better testament to the value of SB 376 and 377.

Rep. Friske was the lead author on these bills last session. Unfortunately he was unable to be here today, but I wanted to publicly thank him for all of the work he's done on this issue.

I would like to note that the Assembly version of SB 377 was amended by the Assembly Criminal Justice Committee. Assembly Amendment 1 to AB 474 eliminates the retired officer's residential address from the certification cards. We did this at the request of the WI Chiefs of Police Association. The committee passed AB 473 and 474 unanimously.

I appreciate your consideration of these important pieces of public safety legislation. The life that could be saved by a retired officer could be yours!

Good morning, I want to thank you for this opportunity to speak in support of Senate Bill 611.

I am William Morales, and I am here on behalf of the City of Milwaukee. I currently work out of Mayor Barrett's Office of Violence Prevention, as an advisor to the Mayor on firearm safety issues. My duties also include being Mayor Barretts Regional Coordinator to the national coalition of Mayors Against Illegal Guns. I am currently on a leave of absence from the Milwaukee Police Department, where I am a 20-year veteran.

We realize that there are improvements needed in how we prevent and reduce gun violence in our communities. Viable and enforceable legislation is a large part of violence prevention and provides the tools law enforcement needs to safeguard our communities. The challenge is that firearms legislation should be reasonable, sensible and not infringe on a citizen's 2nd Amendment rights, while enhancing the safety and well-being of our citizens here in Wisconsin. Bill 611 meets those tight standards and is the right step towards preventing firearms from falling into prohibited hands.

Every year, 30,000 Americans are killed in this country as a result of gun violence. We seek solutions that support the second amendment while focusing on and punishing criminals, who possess, use and traffic illegal guns. We must close loopholes in our laws that enable criminals to have unlimited access to guns that end up in crime scenes on our streets. Mayor Barrett, through his Office of Violence Prevention, works closely with Police Chief Edward Flynn, D.A. John Chisholm, and other law enforcement throughout the state, in search of reasonable solutions and strategies that will reduce illegal access to firearms and decrease gun violence.

Bill 611 will aid in decreasing the flow of guns accessed illegally - not to prevent legal sales to hunters or other firearm sports enthusiast. The Bill only affects individuals who intentionally provide false information and intentionally give the firearm they just purchased to someone who is currently prohibited from possessing a firearm. Currently a straw purchaser potentially faces only a Misdemeanor charge. If this person is caught and convicted of the current misdemeanor charge, they can continue to legally purchase firearms and continue their straw buying activities. The current system is a revolving door, never permanently prohibiting this type of illegal firearms trafficker from legally purchasing a firearm. Bill 611 stops this legal

loophole and stops the straw purchaser from legally buying from a gun shop or FFL after they are convicted.

Our hope is that this bill will aid in changing the thought process of the person who is asked or told to buy a gun for their prohibited friend, family or associate. To some; facing a misdemeanor is not a strong enough deterrent.

But, the thought of facing felony prosecution should give some potential straw purchasers enough reason to change their criminal behavior and stop their involvement in these types of illegal activities.

We understand that supply and demand are major components to the overall illegal firearm trafficking problem. This bill addresses not just the supply portion but also the demand. Under this bill a person who intentionally receives a stolen firearm, regardless of value, faces felony prosecution. Currently, if the value of the stolen firearm were low enough, a person would only face a misdemeanor charge. In contrast, stealing a firearm is a felony and this bill would treat the receiver of the stolen firearm on the same level and serious threat to public safety. Again, We see great potential for this legislation in changing the decision process of someone involved in receiving a stolen firearm. The thought of facing potential felony prosecution instead of a misdemeanor should go to great lengths in deterring persons from for engaging in this type of illegal conduct.

I thank you for this opportunity to speak in support of this very important, necessary and reasonable legislation.

William Morales

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3 Updated 07-08 Wis. Stats. Database
Not certified under s. 35.18 (2), stats.

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or town except upon a permit issued by the common council or village or town board.

(2) No accumulation or storage of such material shall be allowed within 2,000 feet outside of the corporate limits of a city or village or within 750 feet of the center line of any county trunk, state trunk or federal highway or within 500 feet of the center line of any town road, except upon a permit issued by permission of the town board.

(3) The permit issued by city council, village or town board shall be signed either by the mayor or president or chairperson as the case may be and clerk thereof and shall specify the quantity and manner of storing such junk. Such permit shall be revocable at any time by such council or board after a hearing at which it has been found that the permit holder has failed or refused to comply with the ordinances or restrictions providing regulations for the storage of such junked automobiles or parts thereof. Such hearing may be held by the common council of any city or the board of any town or village upon its own motion, or upon the complaint in writing, duly signed and verified by a complainant. Such complaint shall state the nature of the alleged failure to comply with such ordinance or regulation. A copy of the complaint together with a notice of the hearing shall be served upon the permit holder not less than 10 days previous to the date of hearing.

(4) Any person, firm, partnership or corporation now engaged in the business of accumulating or storing and leaving accumulated or stored junked automobiles, or parts thereof, outside of any building on real estate within the corporate limits of any city or village, or within 2,000 feet outside the corporate limits of a city or village, or within 750 feet of the center line of any state trunk or federal highway in any town on August 19, 1939 may, at any time within 6 months after such date, upon application therefor to the governing body of such town, city or village upon showing such facts, be granted a permit for such place of accumulation or storage; any person, firm, partnership or corporation succeeding a business now engaged in the accumulating or storage and leaving accumulated and stored junked automobiles, or parts thereof, outside of any building on real estate as hereinbefore provided may likewise be granted such permit.

(5) Any person, firm, partnership or corporation violating any of the provisions hereof shall upon conviction be fined not less than \$10, nor more than \$50 for each offense, and in default of payment of said fine shall be imprisoned in the county jail for a period not exceeding 30 days. Each day that junk, as herein defined, shall be stored contrary to the provisions hereof shall constitute a separate and distinct offense.

History: 1971 c. 128; 1993 a. 184, 246.

175.30 Purchase of firearms in contiguous states permitted. It is lawful for a resident of this state or a corporation or other business entity maintaining a place of business in this state to purchase or otherwise obtain a rifle or shotgun in a state contiguous to this state if the transfer complies with federal law and the laws of both states.

History: 1971 c. 39.

175.35 Waiting period for purchase of handguns.

(1) In this section:

(ag) "Criminal history record" includes information reported to the department under s. 938.396 (2g) (n) that indicates a person was adjudicated delinquent for an act that if committed by an adult in this state would be a felony.

(ar) "Firearms dealer" means any person engaged in the business of importing, manufacturing or dealing in firearms and having a license as an importer, manufacturer or dealer issued by the U.S. department of the treasury.

(at) "Firearms restrictions record search" means a search of department of justice records to determine whether a person seeking to purchase a handgun is prohibited from possessing a firearm under s. 941.29. "Firearms restriction record search" includes a criminal history record search, a search to determine whether a

person is prohibited from possessing a firearm under s. 51.20 (13) (cv), a search to determine whether the person is subject to an injunction under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (c), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under s. 941.29 and that has been filed with the circuit court under s. 806.247 (3), and a search to determine whether the person is prohibited from possessing a firearm under s. 813.125 (4m).

(b) "Handgun" means any weapon designed or redesigned, or made or remade, and intended to be fired while held in one hand and to use the energy of an explosive to expel a projectile through a smooth or rifled bore.

(c) "Working day" means each day except Saturday, Sunday, or a legal holiday under s. 995.20.

(2) When a firearms dealer sells a handgun, he or she may not transfer possession of that handgun to any other person until all of the following have occurred:

(a) The transferee has provided identification as required by rule under sub. (2g) (a).

(b) The transferee has completed the notification form described in sub. (2g) (b).

(c) The firearms dealer has conveyed the information from the completed notification form to the department of justice as required by rule under sub. (2g) (b) and requested a firearms restrictions record search.

(d) Forty-eight hours, subject to extension under sub. (2g) (c) 4. c., have elapsed from the time that the firearms dealer has received a confirmation number regarding the firearms restrictions record search under sub. (2g) (c) from the department of justice and the firearms dealer has not been notified that the transfer would be in violation of s. 941.29.

(2e) When a transferee completes the notification form described in sub. (2g) (b), the transferee shall provide truthful information.

(2f) When a firearms dealer requests that the department of justice provide a firearms restrictions record search under sub. (2g), he or she shall provide truthful information about his or her status as a firearms dealer and shall provide an accurate firearms dealer identification number obtained under sub. (2h). A person may request that the department provide a firearms restrictions record search under sub. (2g) only if he or she is a firearms dealer.

(2g) (a) The department of justice shall promulgate rules prescribing procedures for a transferee to provide and a firearms dealer to inspect identification containing a photograph of the transferee.

(b) The department of justice shall promulgate rules prescribing a notification form for use under sub. (2) requiring the transferee to provide his or her name, date of birth, gender, race and social security number and other identification necessary to permit an accurate firearms restrictions record search under par. (c) 3. and the required notification under par. (c) 4. The department of justice shall make the forms available at locations throughout the state.

(c) The department of justice shall promulgate rules for firearms restrictions record searches regarding transferees under sub. (2), including procedures for all of the following:

1. A firearms dealer to convey the information from a completed notification form to the department using a toll-free telephone number provided by the department.

2. The department to provide the firearms dealer with a confirmation number confirming the receipt of the information under subd. 1.

3. The department to conduct the firearms restrictions record search regarding the transferee. The rules shall include, but not be limited to, a requirement that the department use the transaction

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information for management of enforcement system and the national crime information center system.

4. The department to notify the dealer, either during the initial telephone call or as soon thereafter as practicable, of the results of the firearms restrictions record search as follows:

a. If the search indicates that the transferee is prohibited from possessing a firearm under s. 941.29, the department shall provide the firearms dealer with a unique nonapproval number. The department may not disclose to the firearms dealer the reason the transferee is prohibited from possessing a firearm under s. 941.29.

b. If the search indicates that the transferee is not prohibited from possessing a firearm under s. 941.29, the department shall provide the firearms dealer with a unique approval number.

c. If the search indicates a felony charge without a recorded disposition, the deadline under sub. (2) (d) is extended to the end of the 3rd complete working day commencing after the day on which the finding is made. The department shall notify the firearms dealer of the extension as soon as practicable. During the extended period, the department shall make every reasonable effort to determine the disposition of the charge and notify the firearms dealer of the results as soon as practicable.

(2h) Upon the request of any firearms dealer, the department of justice shall provide that firearms dealer with a unique firearms dealer identification number for use under this section.

(2i) The department shall charge a firearms dealer a \$13 fee for each firearms restrictions record search that the firearms dealer requests under sub. (2) (c). The firearms dealer may collect the fee from the transferee. The department may refuse to conduct firearms restrictions record searches for any firearms dealer who fails to pay any fee under this subsection within 30 days after billing by the department.

(2j) A firearms dealer shall maintain the original record of all completed notification forms and a record of all confirmation numbers and corresponding approval or nonapproval numbers that he or she receives regarding firearms restrictions record searches under sub. (2g). The firearms dealer shall mail the duplicate copy of each completed notification form to the department of justice.

(2k) (ag) In this subsection:

1. "Law enforcement agency of a physically adjacent state" has the meaning given in s. 175.46 (1) (b).

2. "Wisconsin law enforcement agency" means a governmental unit of one or more persons employed by this state or a political subdivision of this state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(ar) Except as provided in pars. (b) to (j) and as necessary to administer this section, the department of justice shall do all of the following:

1. Deny access to any record kept under this section.

2. Check each duplicate notification form received under sub. (2j) against the information recorded by the department regarding the corresponding request for a firearms restrictions record search under sub. (2g). If the department previously provided a unique approval number regarding the request and nothing in the duplicate completed notification form indicates that the transferee is prohibited from possessing a firearm under s. 941.29, the department shall destroy all records regarding that firearms restrictions record search within 30 days after receiving the duplicate form.

(b) Notwithstanding par. (ar), the department of justice may maintain all of the following:

1. Records necessary to comply with federal law.

2. a. Except as provided in subd. 2. b., a log of dates of requests for firearms restrictions record searches under sub. (2g) together with confirmation numbers, unique approval and nonap-

proval numbers and firearms dealer identification numbers corresponding to those dates.

b. Within 3 years after the department issues a unique approval number, the department shall destroy all corresponding information contained in the log under subd. 2. a.

3. Records necessary to administer this section.

(c) Notwithstanding par. (ar), the department of justice shall provide access to any record under this section under all of the following circumstances:

1. The department of justice receives a record request that is submitted in writing by a Wisconsin law enforcement agency.

2. The request submitted under subd. 1. appears on the Wisconsin law enforcement agency's letterhead and contains all of the following:

a. A statement that the Wisconsin law enforcement agency is conducting an investigation of a crime in which a handgun was used or was attempted to be used or was unlawfully possessed.

b. A statement by a division commander or higher authority within the Wisconsin law enforcement agency that he or she has a reasonable suspicion that the person who is the subject of the information request has obtained or is attempting to obtain a handgun.

c. The signature of a division commander or higher authority within the Wisconsin law enforcement agency.

(d) Whenever a Wisconsin law enforcement agency makes a request for information under par. (c), the agency shall report to the subject of the information request the fact that a request has been made and the name of the Wisconsin law enforcement agency that made the request. The agency shall make the report whenever the earliest of the following occurs:

1. The person who is the subject of the information request under par. (c) 2. b. is no longer material to the investigation conducted under par. (c) 2. a.

2. The Wisconsin law enforcement agency has completed its investigation under par. (c) 2. a.

3. One year after the date that the Wisconsin law enforcement agency made the request under par. (c).

(e) A Wisconsin law enforcement agency may disclose information that is provided by the department of justice under par. (c) to another law enforcement agency. If there is a request for information from a requester other than a law enforcement agency, the Wisconsin law enforcement agency shall not disclose information to the requester that is provided by the department of justice under par. (c). If there is a request by a requester other than a law enforcement agency to copy or inspect any record of the Wisconsin law enforcement agency that contains that information, the agency, acting under s. 19.36 (6), shall delete any portion of the record that relates to that information before release.

(f) A Wisconsin law enforcement agency that is provided access to a record under par. (c) shall destroy all corresponding information contained in the record when the earliest of the following occurs:

1. The person who is the subject of the information request under par. (c) 2. b. is no longer material to the investigation conducted under par. (c) 2. a.

2. The Wisconsin law enforcement agency has completed its investigation under par. (c) 2. a.

3. One year after the date the Wisconsin law enforcement agency made the request under par. (c).

(g) If a search conducted under sub. (2g) indicates that the transferee is prohibited from possessing a firearm under s. 941.29, the attorney general or his or her designee may disclose to a law enforcement agency that the transferee has attempted to obtain a handgun.

(h) If a search conducted under sub. (2g) indicates a felony charge without a recorded disposition and the attorney general or

his or her designee has reasonable grounds to believe the transferee may pose a danger to himself, herself or another, the attorney general or his or her designee may disclose to a law enforcement agency that the transferee has obtained or has attempted to obtain a handgun.

(i) The department of justice may not charge a fee for any services that the department provides under pars. (c) to (j).

(j) If a law enforcement agency of a physically adjacent state makes a request under par. (c), the department shall comply with the request under all of the following circumstances:

1. The law enforcement agency of the physically adjacent state agrees to comply with all the requirements under this subsection.

2. The physically adjacent state allows Wisconsin law enforcement agencies similar or greater access to similar information from that physically adjacent state.

(2L) The department of justice shall promulgate rules providing for the review of nonapprovals under sub. (2g) (c) 4. a. Any person who is denied the right to purchase a handgun because the firearms dealer received a nonapproval number under sub. (2g) (c) 4. a. may request a firearms restrictions record search review under those rules. If the person disagrees with the results of that review, the person may file an appeal under rules promulgated by the department.

(2t) This section does not apply to any of the following:

(a) Transfers of any handgun classified as an antique by regulations of the U.S. department of the treasury.

(b) Transfers of any handgun between firearms dealers or between wholesalers and dealers.

(c) Transfers of any handgun to law enforcement or armed services agencies.

(3) Any person who intentionally violates sub. (2), (2e), (2f) or (2j) shall be fined not less than \$500 nor more than \$10,000 and may be imprisoned for not more than 9 months.

History: 1975 c. 167; 1991 a. 11; 1993 a. 16, 195, 196; 1995 a. 71, 77, 159, 306; 2005 a. 155, 344; 2009 a. 28.

Cross Reference: See also ch. Jus 10, Wis. adm. code.

175.37 Warning whenever transferring a firearm.

(1) Upon the retail commercial sale or retail commercial transfer of any firearm, the seller or transferor shall provide to the buyer or transferee the following written warning in block letters not less than one-fourth inch in height: "IF YOU LEAVE A LOADED FIREARM WITHIN THE REACH OR EASY ACCESS OF A CHILD YOU MAY BE FINED OR IMPRISONED OR BOTH IF THE CHILD IMPROPERLY DISCHARGES, POSSESSES OR EXHIBITS THE FIREARM."

(2) Any person who violates sub. (1) may be fined not more than \$500 or imprisoned for not more than 30 days or both.

History: 1991 a. 139.

175.38 Enforcement of video gambling law. (1) In this section, "law enforcement officer" has the meaning given in s. 165.85 (2) (c) but does not include a special agent of the department of revenue.

(2) Notwithstanding s. 945.041, no law enforcement officer may investigate violations of or otherwise enforce s. 945.03 (2m) or 945.04 (2m).

(3) No law enforcement officer may investigate violations of or otherwise enforce s. 945.05 (1m) unless he or she reasonably believes that the video gambling machine involved may be used in connection with a violation of ch. 945 other than a violation of s. 945.03 (2m) or 945.04 (2m).

History: 2003 a. 33.

175.40 Arrests; assistance. (1) In this section:

(a) "Highway" has the meaning specified in s. 340.01 (22).

(b) "Intersection" has the meaning specified in s. 340.01 (25).

(bn) "Law enforcement officer" has the meaning specified in s. 165.85 (2) (c).

(c) "Peace officer" has the meaning specified in s. 939.22 (22), but does not include a commission warden, as defined in s. 939.22 (5). "Peace officer" includes any tribal law enforcement officer who is empowered to act under s. 165.92 (2) (a).

(2) For purposes of civil and criminal liability, any peace officer may, when in fresh pursuit, follow anywhere in the state and arrest any person for the violation of any law or ordinance the officer is authorized to enforce.

(3) For purposes of civil and criminal liability, any peace officer outside his or her territorial jurisdiction acting under sub. (2) is considered to be acting in an official capacity while in fresh pursuit under sub. (2), making an arrest under sub. (2) or transporting a person arrested under sub. (2).

(4) A peace officer whose boundary is a highway may enforce any law or ordinance that he or she is otherwise authorized to enforce by arrest or issuance of a citation on the entire width of such a highway and on the entire intersection of such a highway and a highway located in an adjacent jurisdiction. This subsection does not extend an officer's jurisdiction outside the boundaries of this state.

(5) (a) For any county having a population of 500,000 or more, if any law enforcement officer has territorial jurisdiction that is wholly or partially within that county and has authority to arrest a person within the officer's territorial jurisdiction, the officer may arrest that person anywhere in the county.

(b) A law enforcement officer specified in par. (a) has the additional arrest authority under this subsection only if the officer's law enforcement agency has adopted policies under par. (d) and the officer complies with those policies.

(c) A law enforcement agency in the jurisdiction where a person is arrested under par. (a) is immune from liability for the acts or omissions of any officer of a different law enforcement agency exercising authority under par. (a).

(d) In order to allow its officers to exercise authority under par. (a), a law enforcement agency for a municipality or county must adopt and implement written policies regarding the arrest authority under this subsection, including at least all of the following:

1. Investigations conducted in another jurisdiction.

2. Arrests made in another jurisdiction if the crime is observed by a law enforcement officer.

3. Arrests made in another jurisdiction if the crime is not observed by a law enforcement officer.

4. Notification to and cooperation with the law enforcement agency of another jurisdiction regarding investigations conducted and arrests made in the other jurisdiction.

(e) The authority under this subsection is in addition to any other arrest authority, including authority granted under any charter.

(6) (a) A peace officer outside of his or her territorial jurisdiction may arrest a person or provide aid or assistance anywhere in the state if the criteria under subds. 1. to 3. are met:

1. The officer is on duty and on official business.

2. The officer is taking action that he or she would be authorized to take under the same circumstances in his or her territorial jurisdiction.

3. The officer is acting to respond to any of the following:

a. An emergency situation that poses a significant threat to life or of bodily harm.

b. Acts that the officer believes, on reasonable grounds, constitute a felony.

(b) A peace officer specified in par. (a) has the additional arrest and other authority under this subsection only if the peace officer's supervisory agency has adopted policies under par. (d) and the officer complies with those policies.

(c) For purposes of civil and criminal liability, any peace officer outside of his or her territorial jurisdiction acting under par. (a) is considered to be acting in an official capacity.

(b) By threatening the imminent use of force against the person of the owner or of another who is present with intent thereby to compel the owner to acquiesce in the taking or carrying away of the property.

(2) Whoever violates sub. (1) by use or threat of use of a dangerous weapon, a device or container described under s. 941.26 (4) (a) or any article used or fashioned in a manner to lead the victim reasonably to believe that it is a dangerous weapon or such a device or container is guilty of a Class C felony.

(3) In this section “owner” means a person in possession of property whether the person’s possession is lawful or unlawful.

History: 1977 c. 173; 1979 c. 114; 1993 a. 486; 1995 a. 288; 2001 a. 109.

While a person who by use of force or a gun seeks to repossess specific property that he or she owns and has a present right of possession to might not have the intention to steal, the taking of money from a debtor by force to pay a debt is robbery unless the accused can trace that ownership to the specific coins and bills in the debtor’s possession. *Edwards v. State*, 49 Wis. 2d 105, 181 N.W.2d 383 (1970).

Since attempted robbery requires proof of elements in addition to those required to prove burglary, they are separate and distinct crimes. *State v. DiMaggio*, 49 Wis. 2d 565, 182 N.W.2d 466 (1971).

It is error not to instruct on the allegations that the defendant was armed and that he attempted to conceal his identity, but it is harmless error when the facts are uncontroverted. *Claybrooks v. State*, 50 Wis. 2d 79, 183 N.W.2d 139 (1971).

On a charge of armed robbery, the court should instruct as to the definition of a dangerous weapon, but the error is harmless if all the evidence is to the effect that the defendant had a gun. *Claybrooks v. State*, 50 Wis. 2d 87, 183 N.W.2d 143 (1971).

If the evidence is clear that the defendant was armed, the court need not submit a verdict of unarmed robbery. *Kimmons v. State*, 51 Wis. 2d 266, 186 N.W.2d 308 (1971).

An information charging armed robbery is void if it fails to allege the use of or threat of force to overcome the owner’s resistance. *Champlain v. State*, 53 Wis. 2d 751, 193 N.W.2d 868 (1972).

Theft is a lesser included offense of robbery. Both require asportation. *Moore v. State*, 55 Wis. 2d 1, 197 N.W.2d 820 (1972).

Taking a pouch from the victim by force and in such a manner as to overcome any physical resistance or power of resistance constituted robbery and not theft under s. 943.20. *Walton v. State*, 64 Wis. 2d 36, 218 N.W.2d 309 (1974).

When a victim testified that the defendant’s accomplice held an object to his throat while the defendant took money from his person and the defendant testified that no robbery whatsoever occurred, the jury was presented with no evidence indicating that a robbery absent the threat of force had occurred. It was not error to deny the defendant’s request for an instruction on theft from a person. *State v. Powers*, 66 Wis. 2d 84, 224 N.W.2d 206 (1974).

When a defendant lost money to a dice cheat and thereafter recovered a similar amount at gunpoint, the jury could convict despite the defendant’s claim that the bills recovered were those lost. *Austin v. State*, 86 Wis. 2d 213, 271 N.W.2d 668 (1978).

Sub. (1) states one offense that may be committed by alternate means. The jury was properly instructed in the disjunctive on the force element. *Manson v. State*, 101 Wis. 2d 413, 304 N.W.2d 729 (1981).

Armed robbery can be the natural and probable consequence of robbery. In such case, an aider and abettor need not have had actual knowledge that the principals would be armed. *State v. Ivey*, 119 Wis. 2d 591, 350 N.W.2d 622 (1984).

If the defendant commits a robbery while merely possessing a dangerous weapon, the penalty enhancer under s. 939.63 is applicable. *State v. Robinson*, 140 Wis. 2d 673, 412 N.W.2d 535 (Ct. App. 1987).

A defendant’s lack of intent to make a victim believe that the defendant is armed is irrelevant in finding a violation of sub. (2); if the victim’s belief that the defendant was armed is reasonable, that is enough. *State v. Hubanks*, 173 Wis. 2d 1, 496 N.W.2d 96 (Ct. App. 1992).

Extortion is not a lesser included offense of robbery. Convictions for both are not precluded. *State v. Dauer*, 174 Wis. 2d 418, 497 N.W.2d 766 (Ct. App. 1993).

This statute does not require a specific intent that property that is demanded actually be transferred. *State v. Voss*, 205 Wis. 2d 586, 556 N.W.2d 433 (Ct. App. 1996), 95–1183.

Asportation, or carrying away, is an element of robbery. The asportation requirement provides a bright line distinction between attempt and robbery. There is no exception for an automobile that is entered by force, but cannot be moved by the defendant. *State v. Johnson*, 207 Wis. 2d 239, 558 N.W.2d 375 (1997), 95–0072.

The state’s attempt to retry the defendant for armed robbery, alleging the use of a different weapon after the trial judge concluded that acquittal on a first armed robbery charge resulted from insufficient evidence of the use of a gun, violated double jeopardy protections. It did not necessarily follow that the state was prevented from pursuing a charge of simple robbery however. *Losey v. Frank*, 268 F. Supp. 2d 1066 (2003).

Letting Armed Robbery Get Away: An Analysis of Wisconsin’s Armed Robbery Statute. Goodstein. 1998 WLR 591.

943.34 Receiving stolen property. (1) Except as provided under s. 948.62, whoever intentionally receives or conceals stolen property is guilty of:

(a) A Class A misdemeanor, if the value of the property does not exceed \$2,500.

(bf) A Class I felony, if the value of the property exceeds \$2,500 but does not exceed \$5,000.

(bm) A Class H felony, if the value of the property exceeds \$5,000 but does not exceed \$10,000.

(c) A Class G felony, if the value of the property exceeds \$10,000.

(2) In any action or proceeding for a violation of sub. (1), a party may use duly identified and authenticated photographs of property which was the subject of the violation in lieu of producing the property.

History: 1977 c. 173; 1987 a. 266, 332; 1991 a. 39; 2001 a. 16, 109.

The fact that sequentially received stolen property was purchased for a lump sum is an insufficient basis to aggregate the value of the property; the crime of receiving stolen property does not require payment. *State v. Spraggin*, 71 Wis. 2d 604, 239 N.W.2d 297 (1976).

If any element of the crime charged occurred in a given county, then that county can be the place of trial. Because the crime of receiving stolen property requires more than two acts, and one of the acts is that the property must be stolen, venue is properly established in the county where that act occurred. *State v. Lippold*, 2008 WI App 130, 313 Wis. 2d 699, 757 N.W.2d 825, 07–1773.

943.37 Alteration of property identification marks. Whoever does any of the following with intent to prevent the identification of the property involved is guilty of a Class A misdemeanor:

(1) Alters or removes any identification mark on any log or other lumber without the consent of the owner; or

(2) Alters or removes any identification mark from any receptacle used by the manufacturer of any beverage; or

(3) Alters or removes any manufacturer’s identification number on personal property or possesses any personal property with knowledge that the manufacturer’s identification number has been removed or altered. Possession of 2 or more similar items of personal property with the manufacturer’s identification number altered or removed is prima facie evidence of knowledge of the alteration or removal and of an intent to prevent identification of the property.

(4) Alters or removes livestock brands, recorded under s. 95.11, from any animal without the owner’s consent, or possesses any livestock with knowledge that the brand has been altered or removed without the owner’s knowledge or consent.

History: 1973 c. 239; 1977 c. 173.

“Similar” under sub. (3) means comparable or substantially alike. *State v. Hamilton*, 146 Wis. 2d 426, 432 N.W.2d 108 (Ct. App. 1988).

943.38 Forgery. (1) Whoever with intent to defraud falsely makes or alters a writing or object of any of the following kinds so that it purports to have been made by another, or at another time, or with different provisions, or by authority of one who did not give such authority, is guilty of a Class H felony:

(a) A writing or object whereby legal rights or obligations are created, terminated or transferred, or any writing commonly relied upon in business or commercial transactions as evidence of debt or property rights; or

(b) A public record or a certified or authenticated copy thereof; or

(c) An official authentication or certification of a copy of a public record; or

(d) An official return or certificate entitled to be received as evidence of its contents.

(2) Whoever utters as genuine or possesses with intent to utter as false or as genuine any forged writing or object mentioned in sub. (1), knowing it to have been thus falsely made or altered, is guilty of a Class H felony.

(3) Whoever, with intent to defraud, does any of the following is guilty of a Class A misdemeanor:

(a) Falsely makes or alters any object so that it appears to have value because of antiquity, rarity, source or authorship which it does not possess; or possesses any such object knowing it to have been thus falsely made or altered and with intent to transfer it as original and genuine, by sale or for security purposes; or

948.60 CRIMES AGAINST CHILDREN

firearm to a person under 18 years of age if the person under 18 years of age is not in compliance with ss. 29.304 and 29.593 or to an adult who is in violation of s. 941.28.

History: 1987 a. 332; 1991 a. 18, 139; 1993 a. 98; 1995 a. 27, 77; 1997 a. 248; 2001 a. 109; 2005 a. 163.

Sub. (2) (b) does not set a standard for civil liability, and a violation of sub. (2) (b) does not constitute negligence *per se*. *Logarto v. Gustafson*, 998 F. Supp. 998 (1998).

948.605 Gun-free school zones. (1) DEFINITIONS. In this section:

(a) "Encased" has the meaning given in s. 167.31 (1) (b).

(ac) "Firearm" does not include any beebee or pellet-firing gun that expels a projectile through the force of air pressure or any starter pistol.

(am) "Motor vehicle" has the meaning given in s. 340.01 (35).

(b) "School" has the meaning given in s. 948.61 (1) (b).

(c) "School zone" means any of the following:

1. In or on the grounds of a school.
2. Within 1,000 feet from the grounds of a school.

(2) **POSSESSION OF FIREARM IN SCHOOL ZONE.** (a) Any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone is guilty of a Class I felony.

(b) Paragraph (a) does not apply to the possession of a firearm:

1. On private property not part of school grounds;
2. If the individual possessing the firearm is licensed to do so by a political subdivision of the state or bureau of alcohol, tobacco and firearms in which political subdivision the school zone is located, and the law of the political subdivision requires that, before an individual may obtain such a license, the law enforcement authorities of the political subdivision must verify that the individual is qualified under law to receive the license;
3. That is not loaded and is:
 - a. Encased; or
 - b. In a locked firearms rack that is on a motor vehicle;
4. By an individual for use in a program approved by a school in the school zone;
5. By an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
6. By a law enforcement officer or state-certified commission warden acting in his or her official capacity; or
7. That is unloaded and is possessed by an individual while traversing school grounds for the purpose of gaining access to public or private lands open to hunting, if the entry on school grounds is authorized by school authorities.
8. By a person who is legally hunting in a school forest if the school board has decided that hunting may be allowed in the school forest under s. 120.13 (38).

(3) **DISCHARGE OF FIREARM IN A SCHOOL ZONE.** (a) Any individual who knowingly, or with reckless disregard for the safety of another, discharges or attempts to discharge a firearm at a place the individual knows is a school zone is guilty of a Class G felony.

(b) Paragraph (a) does not apply to the discharge of, or the attempt to discharge, a firearm:

1. On private property not part of school grounds;
2. As part of a program approved by a school in the school zone, by an individual who is participating in the program;
3. By an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or
4. By a law enforcement officer or state-certified commission warden acting in his or her official capacity.

History: 1991 a. 17; 1993 a. 336; 2001 a. 109; 2005 a. 290; 2007 a. 27.

948.61 Dangerous weapons other than firearms on school premises. (1) In this section:

(a) "Dangerous weapon" has the meaning specified in s. 939.22 (10), except "dangerous weapon" does not include any firearm and does include any beebee or pellet-firing gun that expels a projectile through the force of air pressure or any starter pistol.

(b) "School" means a public, parochial or private school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.

(c) "School premises" means any school building, grounds, recreation area or athletic field or any other property owned, used or operated for school administration.

(2) Any person who knowingly possesses or goes armed with a dangerous weapon on school premises is guilty of:

(a) A Class A misdemeanor.

(b) A Class I felony, if the violation is the person's 2nd or subsequent violation of this section within a 5-year period, as measured from the dates the violations occurred.

(3) This section does not apply to any person who:

(a) Uses a weapon solely for school-sanctioned purposes.

(b) Engages in military activities, sponsored by the federal or state government, when acting in the discharge of his or her official duties.

(c) Is a law enforcement officer or state-certified commission warden acting in the discharge of his or her official duties.

(d) Participates in a convocation authorized by school authorities in which weapons of collectors or instructors are handled or displayed.

(e) Drives a motor vehicle in which a dangerous weapon is located onto school premises for school-sanctioned purposes or for the purpose of delivering or picking up passengers or property. The weapon may not be removed from the vehicle or be used in any manner.

(f) Possesses or uses a bow and arrow or knife while legally hunting in a school forest if the school board has decided that hunting may be allowed in the school forest under s. 120.13 (38).

(4) A person under 17 years of age who has violated this section is subject to the provisions of ch. 938, unless jurisdiction is waived under s. 938.18 or the person is subject to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

History: 1987 a. 332; 1991 a. 17; 1993 a. 336; 1995 a. 27, 77; 2001 a. 109; 2005 a. 290; 2007 a. 27.

Pellet guns and BB guns are dangerous weapons under this section. *Interest of Michelle A.D.* 181 Wis. 2d 917, 512 N.W.2d 248 (Ct. App. 1994).

948.62 Receiving stolen property from a child.

(1) Whoever intentionally receives stolen property from a child or conceals stolen property received from a child is guilty of:

(a) A Class A misdemeanor, if the value of the property does not exceed \$500.

(b) A Class I felony, if the value of the property exceeds \$500 but does not exceed \$2,500.

(bm) A Class H felony, if the value of the property exceeds \$2,500 but does not exceed \$5,000.

(c) A Class G felony, if the value of the property exceeds \$5,000.

(2) Under this section, proof of all of the following is prima facie evidence that property received from a child was stolen and that the person receiving the property knew it was stolen:

(a) That the value of the property received from the child exceeds \$500.

(b) That there was no consent by a person responsible for the child's welfare to the delivery of the property to the person.

History: 1987 a. 332; 2001 a. 109.

948.63 Receiving property from a child. Whoever does either of the following is guilty of a Class A misdemeanor: